

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 18**

Introduced By: Mines, 18

Read first time: January 4, 2007

Committee: Government, Military and Veterans Affairs

A BILL

1       FOR AN ACT relating to the Election Act; to amend sections  
2               32-1301, 32-1302, 32-1303, and 32-1304, Reissue Revised  
3               Statutes of Nebraska, and section 32-101, Revised Statutes  
4               Cumulative Supplement, 2006; to change provisions relating  
5               to recall; to harmonize provisions; and to repeal the  
6               original sections.

7       Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 32-101, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           32-101. Sections 32-101 to 32-1551 and section 4 of this  
4 act shall be known and may be cited as the Election Act.

5           Sec. 2. Section 32-1301, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           32-1301. For purposes of sections 32-1301 to 32-1309,  
8 ~~filing clerk shall mean~~ and section 4 of this act:

9           (1) Filing clerk means the election commissioner or county  
10 clerk for recall of elected officers of cities, villages, counties,  
11 irrigation districts, natural resources districts, public power  
12 districts, school districts, community college areas, educational  
13 service units, hospital districts, and metropolitan utilities  
14 districts; -

15           (2) Malfeasance in office means the knowing and intentional  
16 commission by a public official of an unlawful or wrongful act in the  
17 performance of the duties of such public official which infringes on  
18 the rights of any person or entity;

19           (3) Misfeasance in office means the negligent performance  
20 by a public official of the duties of such public official or the  
21 negligent failure by a public official to perform a specific act  
22 which is a required part of the duties of such public official; and

23           (4) Nonfeasance in office means the knowing and intentional  
24 failure by a public official to perform a specific act which is a  
25 required part of the duties of such public official.

26           Sec. 3. Section 32-1302, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           32-1302. (1) Except ~~for trustees of sanitary and~~  
2 ~~improvement districts,~~ as otherwise provided in sections 31-786 to  
3 31-793, any elected official of a political subdivision and any  
4 elected member of the governing bodies of cities, villages, counties,  
5 irrigation districts, natural resources districts, public power  
6 districts, school districts, community college areas, educational  
7 service units, hospital districts, and metropolitan utilities  
8 districts may be removed from office by recall pursuant to sections  
9 32-1301 to 32-1309 and section 4 of this act. ~~A trustee of a~~  
10 ~~sanitary and improvement district may be removed from office by recall~~  
11 ~~pursuant to sections 31-786 to 31-793.~~

12           (2) If due to reapportionment the boundaries of the area  
13 served by the official or body change, the recall procedure and  
14 special election provisions of sections 32-1301 to 32-1309 and  
15 section 4 of this act shall apply to the registered voters within the  
16 boundaries of the new area.

17           (3) The recall procedure and special election provisions of  
18 such sections shall apply to members of the governing bodies listed in  
19 subsection (1) of this section, ~~other than sanitary and improvement~~  
20 ~~districts,~~ who are elected by precinct, district, or subdistrict of  
21 the political subdivision. Only registered voters of such member's  
22 precinct, district, or subdistrict may sign a recall petition or vote  
23 at the recall election. The recall election shall be held within the  
24 member's precinct, district, or subdistrict. When an elected member is  
25 nominated by precinct, district, or subdistrict in the primary  
26 election and elected at large in the general election, the recall  
27 provisions shall apply to the registered voters at the general

1 election.

2 (4) The recall procedure and special election provisions  
3 shall apply to the mayor and members of the city council of  
4 municipalities with a home rule charter notwithstanding any contrary  
5 provisions of the home rule charter.

6 Sec. 4. One or more registered voters proposing the recall  
7 of an elected official or elected member of a governing body listed in  
8 section 32-1302 shall submit to the filing clerk a typewritten  
9 statement, in concise language of sixty or fewer words, alleging  
10 facts which if true establish malfeasance in office, misfeasance in  
11 office, or nonfeasance in office for which recall of the official or  
12 member is sought. Such voter or voters shall be deemed to be the  
13 principal circulator or circulators of the recall petition.

14 Sec. 5. Section 32-1303, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 32-1303. (1) A petition demanding that the question of  
17 removing an elected official or elected member of a governing body  
18 listed in section 32-1302 be submitted to the registered voters shall  
19 be signed by registered voters equal in number to at least thirty-five  
20 percent of the total vote cast for ~~that~~ such office in the last  
21 general election, except that (a) for an office for which more than  
22 one candidate is chosen, the petition shall be signed by registered  
23 voters equal in number to at least thirty-five percent of the number  
24 of votes cast for the person receiving the most votes for such office  
25 in the last general election, (b) for a member of a board of a Class I  
26 school district, the petition shall be signed by registered voters of  
27 the school district equal in number to at least twenty-five percent of

1 the total number of registered voters residing in the district on the  
2 date that the recall petitions are first ~~checked out~~ procured from  
3 the filing clerk by the principal circulator or circulators, and (c)  
4 for a member of a governing body of a village, the petition shall be  
5 signed by registered voters equal in number to at least forty-five  
6 percent of the total vote cast for the person receiving the most votes  
7 for that office in the last general election. The signatures shall be  
8 affixed to petition papers and shall be considered part of the  
9 petition.

10 (2) Petition circulators shall conform to the requirements  
11 of section 32-630.

12 (3) The petition papers shall be procured from the filing  
13 clerk. Prior to the issuance of such petition papers, an affidavit  
14 shall be signed and filed with the filing clerk by ~~at least one~~  
15 ~~registered voter. Such voter or voters shall be deemed to be the~~  
16 principal circulator or circulators of the recall petition. The  
17 affidavit shall state the name and office of the elected official  
18 or elected member sought to be removed, shall include ~~in~~  
19 ~~typewritten form in concise language of sixty words or less the reason~~  
20 ~~or reasons for which recall is sought, the statement of allegations~~  
21 filed pursuant to section 4 of this act, and shall request that the  
22 filing clerk issue initial petition papers to the principal  
23 circulator or circulators for circulation.

24 (4) The filing clerk shall notify the ~~official~~  
25 individual sought to be removed by any method specified in section  
26 25-505.01 or, if notification cannot be made with reasonable  
27 diligence by any of the methods specified in section 25-505.01, by

1 leaving a copy of the affidavit at the ~~official's~~ individual's  
2 usual place of residence and mailing a copy by first-class mail to  
3 the ~~official's~~ individual's last-known address. ~~If the official~~  
4 ~~chooses,~~ Within twenty days after the individual receives the copy  
5 of the affidavit, he or she may submit a typewritten defense  
6 statement,~~in typewritten form~~ in concise language of sixty or  
7 fewer words,~~or less~~ for inclusion on the petition or he or she  
8 may file an action in the district court having jurisdiction over the  
9 county in which such individual resides to challenge the sufficiency  
10 of the allegations in the statement filed by the principal circulator  
11 or circulators. The court shall presume the allegations in the  
12 statement are true and construe them in the light most favorable to  
13 the principal circulator or circulators and shall determine, without  
14 hearing and without cost to any party, whether the allegations in the  
15 statement establish the existence of malfeasance in office,  
16 misfeasance in office, or nonfeasance in office. The clerk of the  
17 district court shall notify the filing clerk and all parties of the  
18 court's decision within five days after the decision is rendered. If  
19 the allegations are found to be sufficient to establish the existence  
20 of malfeasance in office, misfeasance in office, or nonfeasance in  
21 office, the individual whose removal is sought may submit a defense  
22 statement as described in this subsection within twenty days after  
23 receiving the notice of the decision. Upon receipt of the defense  
24 statement or upon the expiration of such twenty-day period if no  
25 defense statement is submitted, the filing clerk shall issue the  
26 petition papers to the principal circulator or circulators pursuant  
27 to this section. If the allegations are found not to be sufficient,

1 ~~the filing clerk shall not issue the petition papers. Any such~~  
2 ~~defense statement shall be submitted to the filing clerk within~~  
3 ~~twenty days after the official receives the copy of the affidavit.~~

4 (5) The filing clerk shall notify the principal circulator  
5 or circulators that the necessary signatures must be gathered within  
6 thirty days ~~from~~ after the date of issuing the petitions.~~(4)~~ The  
7 filing clerk, upon issuing the initial petition papers or any  
8 subsequent petition papers, shall enter in a record, to be kept in his  
9 or her office, the name of the principal circulator or circulators to  
10 whom the papers were issued, the date of issuance, and the number of  
11 papers issued. The filing clerk shall certify on the papers the name  
12 of the principal circulator or circulators to whom the papers were  
13 issued and the date they were issued. No petition paper shall be  
14 accepted as part of the petition unless it bears such certificate. The  
15 principal circulator or circulators who ~~check out~~ procure  
16 petitions from the filing clerk may distribute such petitions to  
17 persons who may act as circulators of such petitions.

18 ~~(5)~~ (6) Petition signers shall ~~conform to~~ comply with  
19 the requirements of sections 32-629 and 32-630. Each signer of a  
20 recall petition shall be a registered voter and qualified by his or  
21 her place of residence to vote for the office in question.

22 Sec. 6. Section 32-1304, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 32-1304. (1) The Secretary of State shall design the uniform  
25 petition papers to be distributed by all filing clerks and shall keep  
26 a sufficient number of such blank petition papers on file for  
27 distribution to any filing clerk requesting recall petitions. The

1 petition papers shall as nearly as possible conform to the  
2 requirements of section 32-628.

3 (2) In addition to the requirements specified in section  
4 32-628, for the purpose of preventing fraud, deception, and  
5 misrepresentation, every sheet of each petition paper presented to a  
6 registered voter for his or her signature shall have upon it, above  
7 the lines for signatures, (a) a statement that the signatories must be  
8 registered voters qualified by residence to vote for the office in  
9 question and support the holding of a recall election and (b) in  
10 letters not smaller than sixteen-point type in red print (i) the name  
11 and office of the individual sought to be recalled, (ii) the ~~reason~~  
12 ~~or reasons for which recall is sought,~~ statement of allegations  
13 filed pursuant to section 4 of this act, (iii) the defense  
14 statement, if any, submitted by the elected official or elected  
15 member pursuant to section 32-1303, and (iv) the name of the  
16 principal circulator or circulators of the recall petition. ~~The~~  
17 Neither the decision of a county attorney to prosecute or not to  
18 prosecute any individual, nor the finding of the district court  
19 pursuant to section 32-1303, shall ~~not~~ be stated on a petition as  
20 a reason for recall.

21 (3) Every sheet of each petition paper presented to a  
22 registered voter for his or her signature shall have upon it, below  
23 the lines for signatures, an affidavit as required in subsection (3)  
24 of section 32-628 which also includes language substantially as  
25 follows: "and that the affiant stated to each signer, before the  
26 signer affixed his or her signature to the petition, the following:  
27 (a) The name and office of the individual sought to be recalled, (b)

1 ~~the reason or reasons for which recall is sought as printed on the~~  
2 ~~petition, statement of allegations filed pursuant to section 4 of~~  
3 ~~this act,~~ (c) the defense statement, if any, submitted by the  
4 official or member as printed on the petition, and (d) the name of  
5 the principal circulator or circulators of the recall petition."

6 (4) Each petition paper shall contain a statement entitled  
7 Instructions to Petition Circulators prepared by the Secretary of  
8 State to assist circulators in understanding the provisions governing  
9 the petition process established by sections 32-1301 to 32-1309 and  
10 section 4 of this act. The instructions shall include the following  
11 statements:

12 (a) No one circulating this petition paper in an attempt to  
13 gather signatures shall sign the circulator's affidavit unless each  
14 person who signed the petition paper did so in the presence of the  
15 circulator.

16 (b) No one circulating this petition paper in an attempt to  
17 gather signatures shall allow a person to sign the petition until the  
18 circulator has stated to the person (i) the object of the petition as  
19 printed on the petition, (ii) the name and office of the individual  
20 sought to be recalled, (iii) ~~the reason or reasons for which recall~~  
21 ~~is sought as printed on the petition, statement of allegations filed~~  
22 pursuant to section 4 of this act, (iv) the defense statement, if  
23 any, submitted by the official or member as printed on the  
24 petition, and (v) the name of the principal circulator or circulators  
25 of the recall petition.

26 Sec. 7. Original sections 32-1301, 32-1302, 32-1303, and  
27 32-1304, Reissue Revised Statutes of Nebraska, and section 32-101,

1 Revised Statutes Cumulative Supplement, 2006, are repealed.